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REV v. JEV

HIGH COURT MALAYA, KUALA LUMPUR
EVROL MARIETTE PETERS J
[DIVORCE PETITION NO: WA-33-360-07-2023]
17 JULY 2024

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Abstract – *Spousal maintenance does not guarantee the continuity of the exact standard of living for a spouse post-separation or divorce. Financial arrangements, assets division, and spousal support may vary widely, resulting in different outcomes in different cases. While the legal system strives to achieve fairness, it could not ensure identical outcomes for every couple divorcing or separating due to the multifaceted nature of individual circumstances. The court's primary responsibility is to ensure that there is no drastic change in the living conditions of the spouse receiving maintenance, particularly if the marriage lasted for a significant duration. Even though the objective is to prevent a significant decline in the spouse's standard of living, the expectation of replicating the exact marital standard is both unrealistic and unsupported by law.*

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FAMILY LAW: *Maintenance – Spousal support and maintenance – Petitioner husband filed divorce petition while respondent wife filed cross-petition – Application by wife for ancillary relief for payments – Whether all expenses claimed for necessary – Whether substantiated – Whether husband's refusal to provide any spousal support justified – Reasonable and appropriate sum of maintenance payable by husband to wife – Factors, considerations and objectives considered*

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FAMILY LAW: *Maintenance – Spousal support and maintenance – Petitioner husband filed divorce petition while respondent wife filed cross-petition – Application by wife for ancillary relief for payments – Wife sought order for husband to make full disclosure of all particulars, documents, assets and income and to produce relevant documents – Whether essentially request for discovery of documents – Whether permissible under application for ancillary relief – Divorce and Matrimonial Proceedings Rules 1980, r. 2*

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The petitioner husband and the respondent wife were married in 1989. The petitioner, an advocate and solicitor, ran his own law practice and the respondent assisted him by managing the finances of his law practice. The marriage deteriorated over time, with the petitioner alleging that the respondent's behaviour was so unreasonable that it became impossible for him to continue living with her. The respondent, on the other hand, argued that the marriage had broken down primarily due to the petitioner's adulterous relationship with another woman, with whom he fathered a child. The petitioner left the matrimonial home in April 2022, marking the physical separation of the parties. The respondent remained in the matrimonial home. In July 2023, the petitioner filed a divorce petition. In

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response, the respondent filed a cross-petition, presenting her own grounds for divorce. In the present application for ancillary relief, the respondent sought the following payments: (i) an outstanding loan of RM85,285.63 due and owing to RHB Bank ('bank') for the matrimonial home; (ii) a monthly payment of RM880.64 for her medical insurance and the reimbursement of RM660 for a medical bill incurred; (iii) a sum of RM8,297 for the cost of a new gearbox for the car, according to the quotation issued by the workshop; (iv) monthly maintenance of RM40,000 until the disposal of the divorce petition; (v) a monthly sum of RM2,880 to be paid towards credit card debts; and (vi) an order for the petitioner to make a full disclosure of all particulars, documents, assets and income and to produce the relevant documents ('prayer 7'). Resisting the respondent's application, the petitioner asserted that the marriage collapsed due to the respondent's poor and reckless handling of finances which resulted in substantial personal and business financial losses, placing a significant strain on their marital relationship.

Held (allowing application in part):

(1) The respondent had requested for the petitioner to pay RM85,285.63 which was due and owing to the bank for the loan taken by the respondent to finance the matrimonial home. Additionally, the respondent sought for the petitioner to take all necessary steps to halt the auction scheduled, which was the result of the default in the repayment of the loan. On the application of the respondent, the court ordered a stay of the action ('stay order') of the matrimonial home until the disposal of the divorce petition. The bank, however, filed an application to intervene in these proceedings and set aside the stay order ('encl. 103'). Enclosure 103 was allowed. Instead of paying the total amount of RM85,285.63 due and owing to the bank for the matrimonial home, the petitioner was ordered to pay a monthly amount of RM9,400 to the respondent who would then forward the payment to the bank. This arrangement would continue until the full disposal of the divorce petition. Ensuring the respondent had a secure place to live was essential as leaving her without a roof over her head would have been unjust and contrary to the principles of equitable maintenance. The need for accommodation was a basic necessity. Furthermore, it was undisputed that the petitioner had consistently paid the loan instalments for the matrimonial home. These payments were made from the income he earned through his law practice. It was also noteworthy that the respondent was actively involved in the petitioner's law practice where she had managed its finances. This collaboration further justified the continuation of financial support to ensure the respondent's housing needs were met. (paras 20-22 & 24-25)

(2) The petitioner had been consistently making the payment of RM880.64 for the respondent's medical insurance. As such, it was ordered that the petitioner continues to do so. The petitioner was also ordered to pay the medical bill and cover the costs for the gearbox repairs of the car. (paras 28 & 29)

(3) A number of the claimed expenses appeared to be inflated beyond reasonable amounts for the goods or services purportedly purchased. This discrepancy suggested either a lack of accurate record-keeping or a deliberate attempt to overstate costs. Various expenses seemed unnecessary in the context of the respondent's activities or objectives. These items did not appear to contribute meaningfully to the intended outcomes and raised questions about the prudence of such expenditures. Furthermore, a significant portion of the expenses lacked proper justification. Essential documentation, such as receipts, invoices or explanations detailing the necessity and appropriateness of the expenses, was either missing or insufficient. This lack of substantiation undermined the legitimacy of the claimed costs and suggested an exaggeration of expenses. The respondent had not substantiated her claim for a monthly maintenance payment of RM40,000. A more appropriate monthly income was RM9,877.98 (rounded up to RM10,000). (paras 43-45 & 57)

(4) The petitioner remained steadfast in his refusal to provide any spousal support to the respondent. His refusal was unjustified for several reasons: (i) the maintenance ordered to be paid was interim, pending the final resolution of the divorce. The interim support was intended to ensure that the respondent's immediate financial needs were met during the legal proceedings; (ii) the allegations made by the petitioner regarding the respondent's financial situation and the cause of the breakdown of the marriage, had not been substantiated; and (iii) the primary source of income that funded the parties' lifestyle was derived from the petitioner's law practice. The respondent, having been cut off from this income, now lacked the means to support herself. It was unreasonable for the petitioner to expect that the respondent could manage without any financial assistance, given that the lifestyle they shared was primarily sustained by the petitioner's earnings. The petitioner was not in the position to deny altogether such spousal maintenance to the respondent. (paras 67-69)

(5) The respondent should be responsible for managing the credit card debts herself as: (i) the petitioner had already been ordered to pay a substantial amount, *ie*, more than RM20,000 in total for the respondent's monthly maintenance. This sum was determined to be sufficient to cover her essential needs, including housing, medical insurance and other living

expenses; and (ii) it was important to foster a sense of financial responsibility in the respondent. By managing her own credit card debts, the respondent would develop a better understanding of her financial situation and learn to manage her resources more effectively. Such responsibility could lead to more prudent financial decisions in the future. (paras 71-73)

(6) A detailed examination of the items listed in Prayer 7 revealed that the respondent had exceeded the scope of what was permissible under this application. This application was intended for ancillary relief as defined in r. 2 of the Divorce and Matrimonial Proceedings Rules 1980 as '(a) an avoidance of disposition order; (b) a financial provision order; (c) an order for maintenance pending suit; (d) a property adjustment order; or (e) a variation order'. Given that Prayer 7 was essentially a request for the discovery of documents, rather than a request for a financial order that would resolve an issue of maintenance, asset distribution or other forms of financial support, it did not fit within the scope of ancillary relief. It was inappropriate to grant the relief sought in Prayer 7. (paras 76 & 77)

Case(s) referred to:

Ananda Dharmalingam v. Chantella Honeybee Sargon [2007] 1 CLJ 481 CA ***(refd)***
ATE v. ATD [2016] SGCA 2 ***(refd)***
Diana Clarice Chan Chiing Hwa v. Tiong Chiong Hoo [2002] 1 CLJ 721 CA ***(refd)***
Dr Shameni Pillai PB Rajedran v. Dr S Arulselvam Sanggilly & Anor [2011] 6 CLJ 782 HC ***(refd)***
Foo Ah Yan v. Chiam Heng Chow [2012] 2 SLR 506 ***(refd)***
Gan Koo Kea v. Gan Shiow Lih [2003] 4 CLJ 539 HC ***(refd)***
Koay Cheng Eng v. Linda Herawati Santoso [2008] 4 CLJ 105 CA ***(refd)***
Lee Chin Guan v. Pang Kim Joon [2017] CLJU 1988; [2017] 1 LNS 1988 HC ***(refd)***
PU v. VPT [2021] SGCA ***(refd)***
Re Borthwick (Deceased); Borthwick & Anor v. Beauvais & Ors [1949] 1 Ch 395 ***(refd)***
Shireen Chelliah Thiruchelvam v. Kanagasingam Kandiah [2010] 2 CLJ 736 HC ***(refd)***
Sivajothi Suppiah v. Kunathasan Chelliah [2006] 5 CLJ 318 HC ***(refd)***
Sreedevi Naidu T Sree Ramalu Naidu v. Eelasegaran T Nadarajah & Anor [2016] 6 CLJ 538 CA ***(refd)***
Tay Bok Choon v. Tahansan Sdn Bhd [1987] 1 CLJ 441; [1987] CLJ (Rep) 24 PC ***(refd)***
V Sandrasagaran Veerapan Raman v. Dettarassar Velentine Souvina Marie [1999] 5 CLJ 474 HC ***(refd)***
VPU v. VPT [2021] SGCA ***(refd)***

Legislation referred to:

Divorce and Matrimonial Proceedings Rules 1980, r. 2
Law Reform (Marriage and Divorce) Act 1976, ss. 77(1), 78

For the petitioner - Hazman Ahmad; M/s Omar Ismail Hazman & Co
For the respondent - Sharon Shakila Gabriel; M/s N Sarawathy Devi

Reported by Najib Tamby

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JUDGMENT

Introduction

[1] This was an application ("this application") for ancillary relief by the respondent-wife in encl. 35 for, *inter alia*, the following payments, namely
B (i) an outstanding loan of RM85,285.63 due and owing to RHB Bank ("the bank") for the matrimonial home ("matrimonial home"); (ii) monthly maintenance of RM40,000 until disposal of the divorce petition; (iii) monthly sum of RM2,880 to be paid towards credit card debts as determined by the Agensi Kaunseling dan Pengurusan Kredit ("AKPK");
C (iv) a sum of RM8,297 for the cost of a new gearbox for the car, according to the quotation issued by the workshop; and (v) an order for the petitioner-husband to make full disclosure of all particulars, documents, assets, and income, and to produce documents pertaining thereto.

[2] In the interest of privacy of the parties concerned and sensitivity of the
D issues, the petitioner-husband and respondent-wife have been anonymised respectively as REV and JEV.

The Factual Background

[3] The petitioner and respondent (collectively "the parties"), both aged
E 64 at the time of the hearing of this application, registered their marriage in Kuala Lumpur in 1989.

[4] The petitioner, an advocate and solicitor, ran his own law practice, while the respondent assisted him by managing the finances of the petitioner's law practice.

F **[5]** The marriage deteriorated over time, with the petitioner alleging that the respondent's behaviour was so unreasonable that it became impossible for him to continue living with her. On the other hand, the respondent claimed that the marriage had broken down primarily due to the petitioner's adulterous relationship with another woman, with whom he fathered a child.

G **[6]** In April 2022, the petitioner left the matrimonial home, marking the physical separation of the parties. The respondent remained in the matrimonial home. In July 2023, the petitioner filed a divorce petition ("the divorce petition"), seeking to legally end the marriage. This filing initiated the formal legal process of divorce.

H **[7]** In response, the respondent filed a cross-petition ("the cross-petition") in September 2023, presenting her own grounds for divorce and potentially seeking different reliefs for the dissolution of the marriage. In November 2023, the respondent filed this application.

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The Issues

[8] The main issues for consideration in this application were as follows:

(i) whether the petitioner was obliged to pay the respondent a monthly amount of RM9,400 as loan repayment to the bank for the matrimonial home;

(ii) whether the respondent was entitled to a monthly payment of RM40,000 from the petitioner as spousal maintenance and arrears thereof;

(iii) whether the petitioner was obliged to pay a monthly sum of RM2,880 to the AKPK for the management of the respondent's credit card debts; and

(iv) whether the petitioner was obliged to produce documents as listed by the respondent.

[9] I allowed this application only partially for the following reasons.

Contentions, Evaluation, And Findings

[10] In scrutinising the complexities surrounding the issue of spousal maintenance, special focus was placed on s. 77(1) of the Law Reform (Marriage and Divorce) Act 1976 ("Law Reform (Marriage and Divorce) Act"), which reads:

> Section 77 - Power of court to order maintenance of spouse
>
> (1) The court may order a man to pay maintenance to his wife or former wife:
>
> (a) during the course of any matrimonial proceedings;
>
> (b) when granting or subsequent to the grant of a decree of divorce or judicial separation;
>
> (c) if, after a decree declaring her presumed to be dead, she is found to be alive. (emphasis added)

[11] While the court retained discretionary power in adjudicating maintenance claims by a spouse, its decisions are influenced by factors such as the degree of responsibility attributed to each party for the breakdown of the marriage, as well as the 'means and needs' test delineated in s. 78 of the Law Reform (Marriage and Divorce) Act, which states:

> Section 78 – Assessment of maintenance
>
> In determining the amount of any maintenance to be paid by a man to his wife or former wife or by a woman to her husband or former husband, the court shall base its assessment primarily on **the means and needs of the parties,** regardless of the proportion such maintenance bears to the income of the husband or wife as the case may be, **but shall have regard to the degree of responsibility which the court apportions to each party for the breakdown of the marriage.** (emphasis added)

[12] One of the primary reasons for resisting this application was the petitioner's assertion that the marriage collapsed due to the respondent's reckless financial management. The petitioner claimed that the respondent's poor handling of finances resulted in substantial personal and business financial losses, placing a significant strain on their marital relationship.

[13] In contrast, the respondent presented a different narrative. She contended that the marriage had irretrievably broken down due to the petitioner's adulterous relationship. The respondent alleged that the petitioner was involved with another woman, with whom he had fathered a child. This alleged betrayal, according to the respondent, was the key factor that led to the breakdown of their marriage.

[14] In the present case, although the divorce petition and cross-petition had already been filed, the allegations made by the parties regarding the cause of the breakdown of the marriage had not been ventilated. As such, I was not in a position to consider those allegations. On this note, I was guided by the case of *Shireen Chelliah Thiruchelvam v. Kanagasingam Kandiah* [2010] 2 CLJ 736, where it was stated by Suraya Othman J (as she then was):

> [30] Therefore before this court can decide whether the wife is entitled to any maintenance, the issue of whether the alleged adulterous relationship between the wife and Dr Suresh Marcandan led to the breakdown of the marriage has to be decided first. The defendant has to file a petition for divorce and cite the alleged adulterer as a co-respondent or if the wife filed for divorce, then the defendant has to cite the alleged adulterer in his answer to the divorce petition as required by s. 58 of the LRA. *Until the divorce petition is filed and the allegation of adultery is ventilated the issue of apportionment of responsibility for the breakdown of the marriage cannot be decided upon by this court and as such the issue of maintenance to the wife too, had to be postponed till that date.* (emphasis added)

[15] Hence, the focus had to be whether the respondent had fulfilled the means and needs test as stipulated in s. 78 of the Law Reform (Marriage and Divorce) Act.

[16] The application of s. 78 of the Law Reform (Marriage and Divorce) Act was witnessed in numerous cases including *Sreedevi Naidu T Sree Ramalu Naidu v. Eelasegaran T Nadarajah & Anor* [2016] 6 CLJ 538; [2016] 3 MLJ 26 and *Koay Cheng Eng v. Linda Herawati Santoso* [2008] 4 CLJ 105; [2008] 4 MLJ 863, where in the latter case, it was stated by Hashim Yusoff JCA, speaking for the Court of Appeal, in the following passage:

> What is needed to be decided now is the amount of maintenance to be awarded to the wife. It is an established principle that in deciding what amount of maintenance the husband should pay the wife, *the court must take into consideration the means and needs of the parties. In assessing the means and needs of the parties the court has always had regard to the duration of the marriage, whether there were any children of the marriage, the age of the parties,*

whether the husband had financially supported the wife during the duration of their marriage, the parties earning capabilities and whether the divorce would have affected the husband's position financially. (emphasis added)

[17] Emphasising the importance of s. 78 of the Law Reform (Marriage and Divorce) Act in addressing spousal maintenance, it was crucial to underscore the principle of examining the 'means and needs' of both parties involved. This provision mandates a thorough evaluation, not only of the petitioner's financial capabilities but also those of the respondent.

[18] In my evaluation of whether the respondent was entitled to maintenance, I was mindful of established legal precedents, specifically the cases of *Dr Shameni Pillai PB Rajedran v. Dr S Arulselvam Sanggilly & Anor* [2011] 6 CLJ 782, and *V Sandrasagaran Veerapan Raman v. Dettarassar Velentine Souvina Marie* [1999] 5 CLJ 474. These cases underscored the importance of considering the following factors:

(i) income, earning capacity, property, or financial resources that each party presently possesses or is likely to possess in the foreseeable future;

(ii) financial needs, obligations, and responsibilities that each party currently has, or is likely to have in the foreseeable future;

(iii) standard of living enjoyed by the family prior to the breakdown of the marriage;

(iv) age of each party and duration of their marriage;

(v) existing health, physical, or mental disability of the parties; and

(vi) respective contributions made by each party to the welfare of the family.

[19] In *Sivajothi K Suppiah v. Kunathasan Chelliah* [2006] 5 CLJ 318; [2006] 3 MLJ 184, it was stated that the court should look at the nature of maintenance as a 'form of material provision that will enable an adult to live a normal life.' The court, in that case, further held that maintenance cannot mean mere subsistence such as food, but also clothing, housing and money, 'all of which vary according to the means of the man who leaves a wife behind.'

Whether Petitioner Obliged To Pay Respondent Monthly Sum Of RM9,400 As Loan Repayment To The Bank For The Matrimonial Home

[20] Regarding the respondent's current accommodation in the matrimonial home, I addressed prayer (1), where the respondent had requested for the petitioner to pay RM85,285.63, which was due and owing to RHB Bank ("the bank") for the loan taken by the respondent to finance the matrimonial home. Additionally, the respondent sought for the petitioner to take all necessary steps to halt the auction scheduled on 4 December 2023, which was the result of the default in the repayment of the loan.

[21] On 30 November 2023, on the application of the respondent, the court ordered a stay of the auction ("the stay order") of the matrimonial home until the disposal of the divorce petition. Subsequently, however, the bank filed an application in encl. 103 to intervene in these proceedings and set aside the stay order.

[22] Meanwhile, the bank had arranged with the respondent, as the borrower, to pay a monthly installment of RM9,400. In May 2024, the court allowed the bank's application in encl. 103 to set aside the stay order. Instead of paying the total amount of RM85,285.63 due and owing to the bank for the matrimonial home, the petitioner was ordered to pay a monthly amount of RM9,400 to the respondent, who would then forward the payment to the bank. This arrangement would continue until the full disposal of the divorce petition.

[23] It was important to emphasise that the payment of RM9,400 by the petitioner to the respondent was intended to cover the cost of the respondent's accommodation. This arrangement aligns with the legal definition of maintenance, which encompasses the provision of housing.

[24] Ensuring the respondent had a secure place to live was essential, as leaving her without a roof over her head would have been unjust and contrary to the principles of equitable maintenance. The need for accommodation is a basic necessity, and it is vital that it is addressed in maintenance arrangements.

[25] Furthermore, it was undisputed that the petitioner had consistently paid the loan instalments for the matrimonial home. These payments were made from the income he earned through his law practice. It was also noteworthy that the respondent was actively involved in the petitioner's law practice, where she had managed its finances. This collaboration further justified the continuation of financial support to ensure the respondent's housing needs are met.

[26] In summary, the RM9,400 payment was a reasonable and necessary part of the petitioner's maintenance obligations, ensuring that the respondent had stable accommodation, reflecting both parties' contributions to the household and the petitioner's ongoing responsibility to provide support.

[27] In this application, the respondent also requested that the petitioner pay a monthly amount of RM880.64 for her medical insurance. The court was informed that the petitioner has been consistently making these payments. As such, it was ordered for the petitioner to continue doing so.

[28] The respondent also sought reimbursement of RM660 for a medical bill incurred for treatment in November 2022. Additionally, the respondent requested an amount of RM8,297 to be paid to a workshop for the release of a car, which she used, after repairs were made to its gearbox.

[29] I ordered the petitioner to pay the medical bill and cover the costs for the gearbox repairs of the car.

Whether Respondent Entitled To Spousal Maintenance In Monthly Sum Of RM40,000

[30] The respondent claimed a monthly payment of RM40,000 and arrears thereof and increment thereto. The details of the breakdown of such claim are outlined in Table A below, while the amounts awarded by the court after evaluating such costs are reflected in the third column of Table A below.

TABLE A

No	Item	Claimed by Respondent (in MYR)	Ordered by Court (in MYR)
1.	Market (Wet meat market)	340	Items 1 – 4 in the total amount of 1200
2.	Groceries	1215.35	
3.	Groceries – Fruits and nuts	500	
4.	Food take-out	200	
5.	Vitamins and supplements	294	Items 5 – 8 in the total amount of 500
6.	Medicines from Big Pharmacy	319	
7.	Medical treatment and medicines from Muru Poliklinik	157	
8.	Ayurvedic medicine	1,000	
9.	Dentist	1,608.40	Items 9 and 10 in the total amount of RM500
10.	Optometrist	800	
11.	Self-care manicure and pedicure	400	Items 11 – 15 in the total amount of RM750
12.	Self-care – Massage (Neutra Reflexology)	350	
13.	Self-care – haircut, colouring, treatment	900	

14.	Self-care – Skin care Anna Too and Tribal Asia	450	
15.	Self-care – Perfume	500	
16.	Clothes, handbags, jewellery and miscellaneous items	2,630	1,000
17	Maxis Internet bill	319	319
18.	Electricity bill	226	226
19.	Astro bill	114	114
20.	Indah Water bill	8	8
21.	Air Selangor	20	20
22.	Petrol	700	500
23.	Touch & Go	400	300
24.	Monthly car insurance payments	66.70	66.70
25.	Car maintenance	1,000	750
26.	House maintenance	6,375	750
27.	House cleaner	2,000	800
28.	Road tax	56.25	56.25
29.	Temple prayers	300	0
30.	Flowers - prayers	288	0
31.	Assessment	112	112
32.	Quit rent	6.03	6.03
33.	Travel expenses	8,000	Items 33 and 34 in the total amount of 1,500
34.	Entertainment and social activities	5,000	
35.	Dog food and veterinary care	400	Items 35 and 36 in the total amount of 500
36.	Bird food	600	
37.	Donations	500	0
	Total	**38,154.73**	**9,877.98**

[31] The respondent's primary argument for requesting a monthly amount of RM40,000 was that this sum was necessary to maintain her lifestyle.

[32] At this juncture, it was crucial to remind the parties that there is no guaranteed continuity in the exact standard of living for a spouse post-separation or divorce. Financial arrangements, asset division, and spousal support can vary widely, resulting in different outcomes in different cases. While the legal system strives to achieve fairness, it cannot ensure identical outcomes for every couple divorcing or separating due to the multifaceted nature of individual circumstances. Hence, the court's primary responsibility was to ensure that there was no drastic change in the living conditions of the spouse receiving maintenance, particularly if the marriage lasted for a significant duration.

[33] I am mindful of the case *Re Borthwick (Deceased); Borthwick & Anor v. Beauvais & Ors* [1949] 1 Ch 395, which has been cited in numerous Malaysian cases. The following is the oft-quoted passage by Harman J:

> It is said that maintenance is the only thing you can look at. What does that mean? It does not mean you can only give the dependant just enough to put a little jam on his bread and butter. It has been already held that what is reasonable for one may not be reasonable for another. It must depend on the circumstances of the case. It certainly depends to some extent on the circumstances of the widow, but I think it may also depend on the circumstances of the testator, that is to say, whether he died a rich man or not, because a rich man may be supposed to have made better provision for his wife's maintenance than a poor one. *Maintenance does not only mean the food she puts in her mouth it means the clothes on her back, the house in which she lives, and the money which she has to have in her pocket, all of which vary according to the means of the man who leaves a wife behind him. I think that must be so. Maintenance cannot mean only mere subsistence.*
>
> (emphasis added)

[34] In revisiting the case of *Re Borthwick (Deceased); Borthwick & Anor v. Beauvais & Ors* ("*Re Borthwick*"), it was crucial to correct a common misconception arising from its frequent misinterpretation. This landmark decision, delivered 75 years ago, has been referenced in diverse contexts that sometimes exceed its original intent. The central dispute concerned the financial entitlement of the testator's wife following substantial changes in their marital and financial circumstances.

[35] Initially, the couple in *Re Borthwick* faced financial hardship that led to the testator's bankruptcy, prompting his wife to move back in with her parents. Despite these challenges, the testator continued to provide his wife with a weekly allowance of GBP3. This commitment persisted even as his financial situation dramatically improved, transforming him from financial distress to significant wealth.

[36] The crux of the legal issue in *Re Borthwick* was not merely the amount of financial support provided to the wife, but rather the appropriateness of maintaining this support given the substantial improvement in the testator's financial circumstances. Ultimately, the court in that case concluded that the wife's entitlement should reflect the changed economic status more substantially than the symbolic GBP3 per week initially provided.

[37] *Re Borthwick* exemplifies the judiciary's commitment to ensuring fairness and equity in financial arrangements after marriage, especially when there are significant changes in a party's financial capacity. It serves as a poignant reminder of the court's role in adapting legal outcomes to the unpredictable economic shifts of life, rather than rigidly adhering to arrangements that no longer reflect current circumstances.

[38] Although *Re Borthwick (Deceased)* is still referred to in several cases, I gained more valuable insights from Singaporean legal precedents set forth in cases such as *Foo Ah Yan v. Chiam Heng Chow* [2012] 2 SLR 506, *ATE v. ATD* [2016] SGCA 2, and *VPU v. VPT* [2021] SGCA. These cases, more contemporary in nature, offer a pragmatic perspective on spousal maintenance post-separation, particularly concerning the entitlements of the wife.

[39] Central to these rulings is the principle of financial preservation, which dictates that the maintenance awarded should, to a reasonable extent, reflect the standard of living enjoyed by the wife during the marriage. However, this principle is applied with flexibility rather than rigidity. The Singapore courts have advocated for a "commonsense holistic approach" that recognises the altered financial landscape post-separation or divorce.

[40] This nuanced approach underscores a fundamental reality, that is, after separation or divorce, both parties must adapt to a new economic reality where maintaining an identical standard of living as during the marriage is impractical. The financial resources that once supported a single household must now stretch to cover two, inevitably reducing the available resources for each party.

[41] Thus, while the objective was to prevent a significant decline in the respondent's standard of living, the expectation of replicating the exact marital standard was both unrealistic and unsupported by law. These cases collectively highlight the court's endeavour to strike a balance between fairness and pragmatism, acknowledging the financial implications of divorce and the necessity to adjust to changed circumstances without clinging to past lifestyles.

[42] Hence, upon conducting a thorough review of the respondent's submitted expenses, I observed several key issues.

[43] Firstly, a number of the claimed expenses appeared to be inflated beyond reasonable amounts for the goods or services purportedly purchased. This discrepancy suggested either a lack of accurate record-keeping or a deliberate attempt to overstate costs.

[44] Secondly, I identified various expenses that seemed unnecessary in the context of the respondent's activities or objectives. These items did not appear to contribute meaningfully to the intended outcomes and raised questions about the prudence of such expenditures.

[45] Furthermore, a significant portion of the expenses lacked proper justification. Essential documentation, such as receipts, invoices, or explanations detailing the necessity and appropriateness of the expenses, was either missing or insufficient. This lack of substantiation undermined the legitimacy of the claimed costs and suggested an exaggeration of expenses. In summary, a closer examination revealed that the respondent's expense claims included unjustified and irrelevant expenditures.

[46] For instance, regarding items 1 to 4 of Table A, the respondent listed her food expenses under categories such as wet market items, groceries, fruits and nuts, and food take out, totaling RM2,255.35. I found this allocation unreasonably high and inflated, especially for the food expenses of a single person. Therefore, I combined the costs of groceries and food into a single category, totaling RM1,200.

[47] The respondent's monthly claim of RM1,770 for vitamins, supplements, medicines, medical treatment, and ayurvedic medicines was reviewed and considered excessive. It was deemed unreasonable to justify these expenses as necessary on a monthly basis. In response, I consolidated these various healthcare expenses into a single category, totaling RM500 monthly. This adjustment aimed to ensure that financial support reflected reasonable and essential healthcare needs while maintaining a prudent allocation of resources. It underscored the importance of balancing support with practical considerations, ensuring fairness and sustainability in the allocation of maintenance payments.

[48] The respondent's claim of RM2,408.40 monthly for dental and eyecare expenses was excessive, especially since there was no evidence indicating a regular need for these services at such a frequency. As a result, I consolidated both dental and eye care expenses into a single category, totaling RM650 monthly. This adjustment was aimed to align the financial support more closely with reasonable and necessary healthcare costs, ensuring that the allocation of resources remained practical and fair in light of the circumstances.

[49] The respondent's claims totaling RM3,600 for self-care items (items 11 to 15 of Table A), including some items without receipts, were excessive and lacked justification. In response, I consolidated these expenses into a single category totaling RM600 per month. This adjustment aimed to bring her self-care spending more in line with reasonable and documented needs.

[50] The respondent's request for MYR2,630 per month for clothes, handbags, jewellery, and miscellaneous items was reduced to RM1,000. Given that the respondent claimed she was unemployed, it raised the question of why such a large amount was necessary for personal items such as clothes and handbags. This reduction reflected a more practical approach to managing personal and discretionary spending, ensuring that financial support was allocated appropriately given the circumstances. The adjustments were made to ensure fairness and better align with the financial realities following the separation or divorce proceedings.

[51] The respondent's monthly expenses for Maxis Internet, electricity, ASTRO, Indah Water, Air Selangor, and quit rent were reviewed and allowed as claimed. Additionally, her claims for car insurance payments and road tax were deemed valid and allowed as claimed.

[52] However, reductions were made to her claims for petrol and Touch & Go allocation, from RM700 and RM400 respectively, to RM500 and RM300, which reflected a more reasonable estimate of her transportation costs. Similarly, her claim for car maintenance for MYR1,000 was adjusted downward to MYR750. These adjustments were made to ensure that the maintenance payments aligned closely with essential expenses, balancing financial support with practical considerations.

[53] The respondent's claims for house maintenance totaling RM6,375 and a house cleaner costing RM2,000 were assessed as excessive given her current situation in the matrimonial home. In light of this, I reduced these amounts to RM800 and RM600 respectively. This decision was aimed at encouraging the respondent to reorganise her living arrangements to better suit her current circumstances. It reflected a practical approach to managing expenses, ensuring they aligned more closely with her actual needs and resources.

[54] The respondent's claims for travel expenses amounting to RM8,000 and entertainment/social activities totaling RM5,000 were significantly adjusted to a total of RM1,500. This decision took into account the respondent's documented health issues, which suggested that frequent travel might not be feasible or advisable. By reducing these expenses, the aim was to align the financial support more closely with practical and essential needs, ensuring that resources are used judiciously while still allowing for reasonable leisure and social activities within her means and health constraints.

[55] The respondent's claim for RM1,000 for food expenses for her dogs and birds was reconsidered and ultimately reduced to RM500. This decision was based on the understanding that this application was intended to address the respondent's own essential needs, and not those of her pets. In my view, it was deemed necessary to prioritise the respondent's financial support towards sustaining her own well-being before considering additional expenditures on pets. The reduction in pet-related expenses to RM500 was aimed at ensuring that the maintenance payments were allocated responsibly and effectively towards meeting the respondent's primary needs. It underscored the principle that financial support should primarily address human necessities, particularly in situations where overall financial resources may be limited or under scrutiny.

[56] In my view, prioritising financial support towards practical and essential living expenses was paramount. I, therefore, concluded that allocating maintenance payments towards temple prayers, flowers, and donations did not align with the intended purpose of the support sought in this application. This decision was aimed at ensuring that maintenance payments were used responsibly and effectively to meet the respondent's genuine needs arising from the divorce, rather than for discretionary or non-essential expenses.

[57] In my final analysis, I concluded that the respondent had not substantiated her claim for a monthly maintenance payment of RM40,000. After careful consideration of the evidence and circumstances presented, I determined that a more appropriate monthly amount was RM9,877.98, as reflected in the third column of Table A. This amount was then rounded up to RM10,000.

[58] I also referenced the case of *Ananda Dharmalingam v. Chantella Honeybee Sargon* [2007] 1 CLJ 481; [2006] 1 LNS 176; [2006] 6 MLJ 179, where I found insightful guidance from the comments made by Faiza Thamby Chik J. His Lordship's remarks provided valuable perspective on similar issues in the following passage:

> Having dealt with the above facts, I will reiterate the two separate tests set out in the LRA (one for the wife and another for the children) that must be considered in considering maintenance for the wife and children herein. By virtue of s. 78 of the LRA set out aforesaid, the only test that this court needs to adopt in deciding if (interim) maintenance should be awarded to the wife in these proceedings is the means and needs of the parties. The wife in the application herein contends that she needs RM6,800 in maintenance. However, the wife has not satisfied or discharged her duty to evidence that she does indeed need this sum of money. Indeed, the breakdown put forward by the wife at para 8 of her affidavit affirmed on 21 June 2004 does not add up to the amount of RM6,800. **Further, the matters detailed in the said breakdown have not**

> **been evidenced by any receipts or bills or any form of documentation or other evidence whatsoever.** It is therefore my finding that the wife has not adequately and/or properly evidenced her needs and that the figure of RM6,800 claimed by the wife in the application herein is an excessive and unjustified amount. The husband in this case had been working in government service until recently. He left government practice at the end of last year. He only began working as a doctor in private practice from March 2004. In the circumstances, this is a husband who had only just started out in his career in private practice. (emphasis added)

[59] In fact, when considering the addition of the housing instalment of RM9,400 and the monthly medical insurance of RM880.64 to the monthly maintenance payment of RM10,000, the total monthly obligation of the petitioner towards the respondent would be over RM20,000. This amount, in my view, was sufficient to meet the maintenance of the respondent.

[60] The petitioner argued that the monthly payments to the respondent were unjustified, claiming that she received funds from the sale of assets that were not disclosed to him, and that she did not deserve to be maintained at that level.

[61] Given that the respondent disputed many of the petitioner's claims, lack of verification at this stage led me to reject the petitioner's argument regarding the alleged undisclosed funds.

[62] I was guided by the cases of *Diana Clarice Chan Chiing Hwa v. Tiong Chiong Hoo* [2002] 1 CLJ 721, [2002] 2 MLJ 97, [2002] 2 AMR 1527 and *Gan Koo Kea v. Gan Shiow Lih* [2003] 4 CLJ 539; [2003] 4 MLJ 770, [2003] 6 AMR 459, where it was stated that in light of conflicting accounts that have not been subjected to the rigorous processes of cross-examination and re-examination, which would occur in a full trial with *viva voce* evidence, the court's duty was to disregard the disputed facts. Instead, the court was obligated to base its decision solely on the undisputed facts.

[63] This crucial aspect of civil litigation practice has been eloquently summarised by Lord Templeman for the Privy Council in *Tay Bok Choon v. Tahansan Sdn Bhd* [1987] 1 CLJ 441; [1987] CLJ (Rep) 24, [1987] MLRA 68, [1987] 1 MLJ 433, in the following words:

> At the end of the day the judge must decide the petition on the evidence before him. *If allegations are made in affidavits by the petitioner and those allegations are credibly denied by the respondent's affidavits, then in the absence of oral evidence or cross examination, the judge must ignore the disputed allegations.* The judge must then decide the fate of the petition by consideration of the undisputed facts. (emphasis added)

[64] An analogy was drawn also to the case of *Lee Chin Guan v. Pang Kim Joon* [2017] CLJU 1988; [2017] 1 LNS 1988; [2017] MLJU 2021, where the court had taken into consideration factors such as the wife's devotion to the

family, the unlikelihood of the wife to be gainfully employed; and the wife's health and medical needs. The following passages by Hayatul Akmal Abdul Aziz JC (as she then was) were relevant to the present case.

> In the present case, I take note that PH was the one who instituted this divorce petition and it is not disputed that RW is a housewife as she had been for the past 30 years of her marriage to PH. She took care of the family while PH was the one who worked and financially maintained the family. *RW is now a 60-year-old woman who at this age would be difficult for her to find a job and it is reasonable for PH to maintain her even though they are soon to be divorced, because she is entitled to under the said Act to claim maintenance from PH.*
>
> …
>
> The issue of a fair and reasonable maintenance must be determined by reference to the facts and circumstances of each case. In *Chaw Anui v. Tan Kim Chai* [2004] 4 Mil 272, *the court considered the following factors: (1) devotion of the wife; (2) the unlikelihood of the wife to be gainfully employed; (3) the wife's health and medical needs; (4) the husband financial means; (5) the living standard of the wife; and (6) the means and the needs of the parties.* In the present case, it is my considered view that 30 years of matrimony is a long period of time and surely PH cannot deny that RW is a devoted wife. *There is no likelihood for her to be gainfully employed at 60 years of age and even if she is healthy, her age will still be an issue.* PH did not deny that the amount claimed by RW to be reasonable for RW to maintain her life to the standard that she has been accustomed to during the marriage. In the circumstances of the case, I find the amount claimed to be fair, reasonable and not excessive. (emphasis added)

[65] In the present case, considering that the respondent was 64 years old at the time of the hearing of this application, there was little to no likelihood for her to be gainfully employed at this stage of her life. On the other hand, the petitioner was an advocate and solicitor who ran a successful law practice, a venture in which the respondent had assisted in managing.

[66] The parties had been married for 33 years before the marriage broke down. In long-term marriages, it is often challenging for the lower-earning spouse to re-enter the workforce at the same level they had left. Spousal support acknowledges the contributions made during the marriage and aims to provide a fair solution that reflects the sacrifices and efforts of both parties.

[67] The petitioner, however, remained steadfast in his refusal to provide any spousal support to the respondent. At this point, I found his refusal unjustified for several reasons. Firstly, the maintenance that was ordered to be paid was interim, pending the final resolution of the divorce. This interim support was intended to ensure that the respondent's immediate financial needs were met during the legal proceedings, and the petitioner's refusal to comply undermined this essential provision.

[68] Secondly, the allegations made by the petitioner regarding the respondent's financial situation and the cause of the breakdown of the marriage had not been substantiated. Without concrete evidence to support these claims, the petitioner's refusal to provide spousal support appeared baseless and unjustified.

[69] Thirdly, the primary source of income that funded the parties' lifestyle was derived from the petitioner's law practice. The respondent, having been cut off from this income, now lacked the means to support herself. It was, therefore, unreasonable for the petitioner to expect that the respondent could manage without any financial assistance, given that the lifestyle they shared was primarily sustained by the petitioner's earnings. Given these considerations, the petitioner was not in a position to deny altogether such spousal maintenance to the respondent.

[70] However, in all fairness, I determined that the respondent was not entitled to any form of arrears from January 2023, as she had claimed. Additionally, she was not entitled to any annual increment to the RM10,000 monthly maintenance. This amount was deemed sufficient as interim maintenance pending the disposal of the divorce petition. This approach, in my view, would balance the need for support, with practical considerations of both parties' current financial situations.

Whether Petitioner Obliged To Make Monthly Payment To AKPK For Management Of Respondent's Credit Card Debts

[71] The respondent had additionally requested that the petitioner pay a monthly sum of RM2,880 towards credit card debts, as determined by the AKPK. After careful consideration, I decided that the respondent should be responsible for managing these debts herself. This decision was based on several factors.

[72] Firstly, I had already ordered the petitioner to pay a substantial amount, more than RM20,000 in total, for the respondent's monthly maintenance. This sum was determined to be sufficient to cover her essential needs, including housing, medical insurance, and other living expenses.

[73] Secondly, it was important for this court to foster a sense of financial responsibility in the respondent. By managing her own credit card debts, the respondent would develop a better understanding of her financial situation and learn to manage her resources more effectively. Such responsibility could lead to more prudent financial decisions in the future.

[74] Therefore, while the petitioner had been ordered to provide significant financial support, the respondent must take an active role in managing her own finances, particularly concerning her credit card debts. This approach would not only ensure fairness, but would also encourage the respondent to engage more actively in her financial affairs, promoting a balanced and sustainable financial future.

Whether Petitioner Obliged To Produce Documents Listed By Respondent

[75] In Prayer 7 of this application, the respondent had prayed for the petitioner to make full disclosure of all particulars, documents, assets, and income, as follows:

(1) Butir-butir tentang semua asset-aset di atas nama Petisyen, termasuk hartanah, saham, bon-bon dan pelaburan;

(2) Butir-butir tentang semua Akaun Bank Pempetisyen;

(3) Salinan Penyata Bank Peribadi Pempetisyen dan buku-buku Pas;

(4) Senarai semua akaun-akaun Bersama Pempetisyen, termasuk dan tidak terhad kepada, dengan perempuan simpanan dan anak luar nikah dan salinan Penyata Bank Akaun Bersama dan buku-buku Pas;

(5) Butir-butir tentang Buku Akaun Simpanan Maybank dan semua buku-buku akaun simpanan yang lain;

(6) Butir-butir tentang Tetuan [REV] & Associates, Akaun Bank Langkawi, termasuk Akaun Klien, dan Akaun Pejabat;

(7) Salinan Penyata-Penyata Tetuan [REV] & Associates, Langkawi dan Penyata Kad Kredit;

(8) Satu senarai semua fail-fail Tetuan [REV] & Associates, Langkawi dari 2017 sehingga ke hari ini (oleh kerana Pempetisyen mempunyai tabiat mengumpul tunai dari anakguam dan tidak mengeluarkan resit atau merekodkan pendapatan yang diterima);

(9) Salinan semua invois-invois dan resit-resit yang dikeluarkan oleh Tetuan [REV] & Associates, Langkawi;

(10) Semua aset-aset yang dibeli untuk perempuan simpanan dan di atas nama perempuan simpanan dan anak luar nikah [***];

(11) Semua wang-wang yang dibayar kepada perempuan simpanan dan di atas nama perempuan simpanan dan anak luar nikah [***];

(12) Senarai semua jurnal undang-undang dan buku-buku undang-undang yang diambil oleh Tetuan [REV] & Associates, Langkawi dan audit untuk diambil dan nilai anggarannya;

(13) Semua butir-butir pelancongan luar negara yang diambil oleh Pempetisyen dari 1989 sehingga hari ini melalui dirinya sendiri dan/atau dengan perempuan simpannya dan/atau anak luar nikahnya;

(14) Salinan paspot-paspot Pempetisyen dari 1989;

(15) Semua kad kredit dan Penyata Kad kredit Tambahan Pempetisyen dan butir-butir pemegang kad principal dan tambahan;

(16) Semua Penyata Kad Kredit perempuan simpanan dan anak luar nikah;

(17) Bayaran Cukai dan Cukai Perkhidmatan Pempetisyen, Firma Tetuan Tetuan [REV] & Associates, Langkawi;

(18) Senarai semua polisi-polisi insuran dan nilai semua polisi-polisi yang telah diambil, di atas nama Pempetisyen, nama perempuan simpanan dan anak luar nikah;

(19) Penyata KWSP Pempetisyen No [*******].

[76] A detailed examination of the items listed in Prayer 7 revealed that the respondent had exceeded the scope of what was permissible under this application. This application was intended for ancillary relief, as defined in r. 2 of the Divorce and Matrimonial Proceedings Rules 1980 as (i) an avoidance of disposition order; (ii) a financial provision order; (iii) an order for maintenance pending suit; (iv) a property adjustment order; or (v) a variation order.

[77] Given that Prayer 7 was essentially a request for discovery of documents rather than a request for a financial order that would resolve an issue of maintenance, asset distribution, or other forms of financial support, it did not fit within the scope of ancillary relief. As such, I decided that it was inappropriate to grant the relief sought in Prayer 7 of this application.

Conclusion

[78] In conclusion, based on the aforementioned reasons and following a meticulous examination of all the evidence presented to this court, as well as the detailed submissions from both parties, this application was allowed only partially, that is, for the petitioner to pay the respondent monthly spousal maintenance of RM10,000 and to make monthly payments of RM880.64 and RM9,400, towards insurance and loan repayment for the matrimonial home.